STATE OF ILLINOIS)
) SS.
COUNTY OF MCLEAN)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeremiah Liebendorfer,
Petitioner,
vs.

NO: 11WC 47770

City of Bloomington,
Respondent,

14IWCC1064

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent, herein and notice given to all parties, the Commission, after considering the issue of nature and extent, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 23, 2014, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: DEC 9 - 2014
MJB/bm
o-12/1/14
052

Michael J. Brennan

Kevin W. Lamborn

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

LIEBENDORFER, JEREMIAH
Employee/Petitioner

Case# 11WC047770

CITY OF BLOOMINGTON
Employer/Respondent

14IWCC1064

On 4/23/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0564 WILLIAMS & SWEE LTD
STEVE WILLIAMS
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

RUSIN MACIOROWSKI & FRIEDMAN LTD
MARK COSIMINI
2506 GALEN DR SUITE 108
CHAMPAIGN, IL 61821

STATE OF ILLINOIS)
)SS.
COUNTY OF MCLEAN)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
CORRECTED ARBITRATION DECISION
NATURE AND EXTENT ONLY

Jeremiah Liebendorfer
Employee/Petitioner

Case # **11** WC **47770**

v.

City Of Bloomington
Employer/Respondent

14IWCC1064

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Bloomington**, on **January 30, 2014**. By stipulation, the parties agree:

On the date of accident, **October 16, 2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **$71,218.16**, and the average weekly wage was **$1,369.58**.

At the time of injury, Petitioner was **37** years of age, ***married*** with **1** dependent child.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **$36,522.00** for Temporary Total Disability.

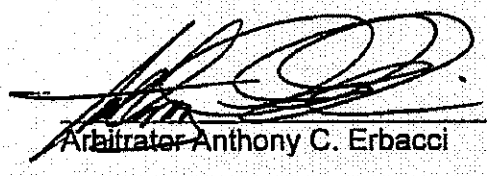
After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of **$695.78**/week for a further period of **50** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **a 10% disability to the Petitioner's whole person**.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Arbitrator Anthony C. Erbacci

April 10, 2014
Date

APR 23 2014

14IWCC1064

FACTS:

The Petitioner sustained undisputed accidental injuries arising out of and in the course of his employment as a patrol officer with the Respondent on October 16, 2011. The Petitioner testified that he was placing a suspect into custody when the suspect resisted and a struggle ensued. The suspect was placed in handcuffs and lifted to his feet but he continued to resist and he pulled the Petitioner to the ground causing injury to the Petitioner's right arm and shoulder. The Petitioner testified that he is right hand dominant.

The Petitioner sought treatment that day at the emergency room and he then followed up at St. Joseph Occupational Medical Center. The Petitioner then saw Dr. Robert Seidl, an orthopedic surgeon, and underwent an MRI which was reported to reveal a suspected avulsion detachment of the anterior/superior glenoid labrum. The Petitioner was then administered an injection, which reportedly provided no relief. On February 1, 2012, the Petitioner underwent a diagnostic arthroscopy with subacromial decompression and bursectomy, debridement of a partial thickness rotator cuff tear and debridement of a type I SLAP lesion. The Petitioner underwent a post operative course of physical therapy and received three more injections to his shoulder.

On June 19, 2012, Dr. Seidl noted that the Petitioner's range of motion and strength were improving and he had less impingement. The focus of the Petitioner's treatment with Dr. Seidl then shifted to the Petitioner's right knee which had been injured in an unrelated accident. On July 20, 2012, Dr. Seidl released the Petitioner to return to light duty work and on January 7, 2013, Dr. Seidl released the Petitioner to return to unrestricted work as of January 5, 2013.

The Petitioner testified that he currently continues to experience a loss of strength and stamina in his right arm and shoulder as well as a loss of range of motion. The Petitioner testified that he also continues to experience clicking, popping, catching, and pain. He testified that he experiences difficulty with drawing his duty weapon in the proper manner as well as difficulty with driving, lifting, and throwing. The Petitioner acknowledged that he has not made any complaints or reported any difficulties regarding his left arm or shoulder to his supervisor, and he testified that he felt he was capable of performing all of the duties of his job as a patrol officer.

The Respondent introduced into the record an Impairment Rating report prepared by Dr. Dru Hauter on December 5, 2013. Dr. Hauter noted that the Petitioner did have a right shoulder labral tear which was repaired and that the Petitioner was at maximum medical improvement with regard to his right shoulder. Dr. Hauter calculated the Petitioner's impairment to be 4% of the upper extremity which converted to 2% whole person impairment.

The sole disputed issue in this matter is the nature and extent of the Petitioner's injury.

14IWCC1064

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to the nature and extent of the injury, the Arbitrator finds and concludes as follows:

The Petitioner's accident occurred after September 1, 2011. Therefore, Section 8.1(b) of the Act requires consideration of the following criteria in determining the level of permanent partial disability:

* The level of impairment reported by a physician licensed to practice medicine in all of its branches which includes an evaluation of medically defined and professionally appropriate measurements of impairment that establish the nature and extent of the impairment based upon the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment.

* the occupation of the injured employee:

* the age of the employee at the time of the injury;

* the employee's future earning capacity; and

* evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability and the relevance and the weight of any factors used in addition to the level of impairment as reported by the physician must be explained.

In the instant case, the Petitioner suffered an avulsion detachment of the anterior/superior glenoid labrum and he underwent a diagnostic arthroscopy with subacromial decompression and bursectomy, debridement of a partial thickness rotator cuff tear and debridement of a type I SLAP lesion.

With regard to the reported level of impairment pursuant to Section 8.1(b), the level of impairment reported by Dr. Dru Hauter pursuant to the American Medical Association's Guides to Evaluation of Permanent Impairment, 6th Edition, is 4% of the upper extremity which is converted to 2% whole person impairment. The Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act.

With regard to the occupation of the injured employee, the Petitioner's occupation is that of a patrol officer, which the Arbitrator notes can require the use of a great deal of physical strength in a sudden and unpredictable manner. The Arbitrator concludes that the Petitioner's ability to perform the duties of his employment will be more adversely affected by his permanent partial disability than would the ability of an individual who performs lighter work. Thus, the Arbitrator concludes that the Petitioner has sustained a greater amount of

permanent partial disability than an individual who performs lighter work. The Arbitrator finds this factor to be particularly relevant and significant in determining the level of permanent partial disability sustained by this Petitioner.

With regard to the age of the employee at the time of injury, the Petitioner's age at the time of injury was 37 years old. The Arbitrator considers the Petitioner to be a younger individual and concludes that the Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

With regards to the employee's future earning capacity, the Arbitrator notes that the Petitioner's future earning capacity does not appear to be significantly diminished because he has been released to return to work with no restrictions. While the Petitioner testified that he has some difficulty working as a patrol officer due to his current condition, the Petitioner testified that he was capable of performing all of the duties of his job as a patrol officer.

With regard to the evidence of disability corroborated by the treating medical records, the Petitioner credibly testified that he currently experiences a loss of strength and stamina in his right arm and shoulder as well as a loss of range of motion. The Petitioner testified that he also continues to experience clicking, popping, catching, and pain. These complaints are corroborated in the medical records of Dr. Seidl as well as Dr. Nord, who examined the Petitioner at the request of his attorney. The Petitioner's complaints as supported by the medical records, evidences a disability as indicated by Commission decisions regarded as precedent pursuant to Section 19(e).

The determination of permanent partial disability is not simply a calculation but an evaluation of all 5 factors as stated in the Act. In making this evaluation of permanent partial disability, consideration is not given to any single enumerated factor as the sole determinant. Therefore, having considered the factors enumerated in Section 8.1(b) of the Act, 820 ILCS 305/8.1(b), the Arbitrator finds that as a result of his accidental injuries the Petitioner has sustained 10% disability to his whole person.

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jerry Pratt,

Petitioner,

vs.

NO: 13 WC 24006

14IWCC1080

Vactor Manufacturing Inc/Federal Signal Corp.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, permanent partial disability, penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 3, 2014, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC1080

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: DEC 12 2014
TJT:yl
o 12/1/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PRATT, JERRY
Employee/Petitioner

Case# 13WC024006

VACTOR MANUFACTURING INC/FEDERAL SIGNAL CORP
Employer/Respondent

14IWCC1080

On 4/3/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1097 SCHWEICKERT & GANASSIN LLP
SCOTT J GANASSIN
2101 MARQUETTE RD
PERU, IL 61354

1120 BRADY CONNOLLY & MASUDA PC
MARK F VUZZA
10 S LASALLE ST SUITE 900
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF LaSalle)

14IWCC1080

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JERRY PRATT
Employee/Petitioner

v.

VACTOR MANUFACTURING, INC./FEDERAL SIGNAL CORP.
Employer/Respondent

Case # 13 WC 24006

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Ottawa**, on **2/26/2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

14IWCC1080

On 8/19/2012, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned $44,716.80; the average weekly wage was $859.94.

On the date of accident, Petitioner was 52 years of age, *single* with no dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0 for TTD, $0 for TPD, $0 for maintenance, and $3,921.55 for other benefits, for a total credit of $3,921.55.

ORDER

The Petitioner's claim for temporary total disability benefits is denied as the petitioner's current condition of ill-being is not causally related to any accident arising out of and in the course of his employment with respondent.

The Petitioner's claim for medical benefits is denied as the petitioner's current condition of ill-being is not causally related to any accident arising out of and in the course of his employment with respondent.

Respondent shall be given a credit of $3,921.55 for other benefits paid for a total credit of $3,921.55.

Petitioner's Petition for Penalties and Attorney's Fees is denied as the Petitioner failed to prove that the respondent's conduct was unreasonable or vexatious.

Respondent shall pay Petitioner permanent partial disability benefits of $515.96 for 10.75 weeks because the injuries sustained caused the 5% loss of the leg, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

3/26/14
Date

APR 3 - 2014

14IWCC1080

FINDINGS OF FACT

The Petitioner testified that he has been employed by the Respondent for 22 years this June. He is employed as a welder. On August 19, 2012, he was making air pipes for one of the trucks. He was moving around a table to do the welding, there was a pallet on the ground, and he tripped and fell hitting his right knee on the concrete. He testified he had no problems with his right knee before this incident. He experienced a burning, sharp pain. The parties do no dispute that the Petitioner sustained an accident arising out of and in the course of his employment stemming from the August 19, 2012 incident.

Petitioner did not see a doctor until October 16, 2012. He was having pain in the right knee. He was seen at St. Mary's Hospital and x-rays were taken. He then treated with Dr. Syed, his family doctor on October 26, 2012. He was seen at Newsome Physical Therapy and then Dr. Syed sent him to ATI. He was seen for pain management by Dr. Estiloo on December 17, 2012. He had injections in his knee through February 2013. He also had an MRI of his low back, but his low back pain is gone. On March 19, 2013, Dr. Syed referred him to Dr. Chudik. He was complaining of pain in his knee at that time.

On May 24, 2013, Petitioner saw Dr. Chudik. He was having pain and swelling, the doctor took him off work, and surgery was performed June 13, 2013. He had a functional capacity evaluation on August 27, 2013, that found he could do his regular job. After that, he felt he was still having problems with his leg and he saw Dr. Rhode.

On September 19, 2013, Petitioner saw Dr. Rhode. Dr. Rhode prescribed medication and told him he could continue to do his normal job. He saw Dr. Rhode three more times, the last being February 20, 2014.

His knee now aches in cold weather, and when he stands on concrete it is painful. He can only walk about three blocks and can only go up three or four steps. He testified that the pain in his right knee is in the front of the knee but sometimes goes to the sides. The pain has always been in the same spot in his knee. It has not changed. After the accident and until he saw a doctor in October 2012, he continued to do his regular job and worked voluntary overtime. After his return to work full duty after the surgery, he has continued to work full time, not missing any time, and has continued to work voluntary overtime.

Vanco Decker testified he is retired from Vactor Manufacturing. He was a co-worker of the Petitioner. On August 19, 2012, he was helping the Petitioner build pipes, and he saw the petitioner trip and fall and strike his knee on the concrete.

Art Zimmerman testified he is the Petitioner's supervisor and that from the date of accident through the time he went off for surgery, the Petitioner did his job and never had any trouble doing his job. Since his return to work full duty after the surgery, he has continued to do his job and has not had any problems doing his job.

Roy Snyder testified that he is the Safety Director at Vactor Manufacturing. He had a conversation with the Petitioner and he asked the Petitioner where he was having problems with his knee. In response to Snyder's question, the Petitioner pointed to the top of his shin below his kneecap. He did not indicate any other areas of pain.

On November 21, 2012, the petitioner was examined by Dr. Breslow for an independent medical evaluation. Dr. Breslow's reports were entered into evidence in this matter. Dr. Breslow also reviewed various medical records and x-rays. He found that the Petitioner had no effusion and no instability of the right lower extremity. There was no jointline tenderness and he had 5/5 motor with dorsiflexion, plantar flexion and EHL. He had a

small centimeter palpable mass in the subcutaneous tissues anterior to his patella. There was a small scar anterior to this. He had no erythema and really minimal discomfort with palpation. He had full extension and flexion. Dr. Breslow diagnosed a right knee contusion related to the accident of August 19, 2012. He recommended over-the-counter anti-inflammatory medications and massaging the indurated area to help break up the scar tissue. He found that the Petitioner was at maximum medical improvement and needed no formal treatment and did not require surgery. Dr. Breslow issued an addendum reported dated June 26, 2013 (Respondent's Exhibit 2) after reviewing the MRI of the right knee. The right knee showed no evidence of a meniscus tear and found no evidence of any significant chondral wear. He found that the petitioner did not need surgery. Dr. Breslow issued a third report dated November 6, 2013. (Respondent's Exhibit 5) There was no jointline tenderness and the doctor found that there was no exacerbation of underlying conditions, specifically the arthritis. He found that there was definitely not a permanent aggravation of a minimally symptomatic knee at that time. He found he had no findings or symptoms related to arthritis at the time of his evaluation. (Respondent's Exhibit 5) He found that the surgery performed by Dr. Chudik was unrelated to the accident of August 19, 2012. (Respondent's Exhibit 5)

Dr. Chudik examined the Petitioner and diagnosed him with a right knee lateral meniscus tear. (Petitioner's Exhibit 7) Subsequent to that, Dr. Chudik performed surgery and found that the petitioner did not have a meniscus tear. (Petitioner's Exhibit 7) Dr. Chudik performed a right chondroplasty with abrasionplasty of the medial femoral condyle and a right chondroplasty with abrasionplasty of the lateral tibial plateau. (Petitioner's Exhibit 7) He found grade II and grade III chondromalacia. (Petitioner's Exhibit 7) After physical therapy, the petitioner was allowed by Dr. Chudik to return to work full duty. After a second opinion with Dr. Rhode, the petitioner was once again allowed to return to work full duty.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner's current condition of ill-being is not causally related to the incident from August 19, 2012. In support of this finding the Arbitrator is persuaded by the opinions of Dr. Breslow when compared to those of Dr. Chudik. Dr. Chudik prior to surgery diagnosed the petitioner with a tear of the lateral cartilage of the meniscus knee current and old bucket handle tear of the medial meniscus. (Petitioner's Exhibit 7) Once Dr. Chudik performed arthroscopic surgery, he found that diagnosis was incorrect. He then performed a right chondroplasty with abrasionplasty. (Petitioner's Exhibit 7) At no time prior to the operation did Dr. Chudik ever diagnose the petitioner with chondromalacia. Dr. Chudik found the petitioner had persistent lateral right knee pain and swelling. (Petitioner's Exhibit 7) Even after review of the MRI prior to the surgery, Dr. Chudik did not diagnose chondromalacia. As stated by Dr. Breslow, the Petitioner had a contusion of the knee. It was only when Dr. Chudik did arthroscopic surgery to repair the meniscus and found that there was no tear to the meniscus that he performed a chondroplasty of the grade II-III chondromalacia that he found. There is no evidence that the Petitioner's chondromalacia was caused by the accident of August 19, 2012. Also, there is no evidence that the Petitioner's chondromalacia was permanently aggravated by the accident of August 19, 2012. It is apparent that the Petitioner suffered a contusion and had an increase in pain in the right knee. However, there was no indication that the chondromalacia as found by Dr. Chudik was caused or aggravated by the accident. The petitioner gave a history to Newsome Physical Therapy at the functional capacity evaluation that he scraped his right knee which eventually developed into a bump or a cyst. Again, this notes that the Petitioner suffered just a contusion of the knee in the accident of August 19, 2012. When seen by Dr. Rhode on September 19, 2013, Dr. Rhode indicated he was unclear as to what condition the Petitioner was suffering from at the time of the injury. (Petitioner's Exhibit 11) Even on February 20, 2014, Dr. Rhode noted all of the Petitioner's subjective complaints, however felt he could return to full duty and only needed oral medication.

Based upon the medical evidence, it is apparent the Petitioner suffered a bruise/contusion to the right knee in the accident of August 19, 2012. The Petitioner's current condition of ill-being is not causally related to that accident.

2. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's treatment with Dr. Syed was reasonable and necessary. Respondent shall pay for any reasonable, related and necessary medical expenses incurred by Dr. Syed pursuant to the fee schedule and subject to Sections 8(a) and 8.2 of the Act and shall receive credit for any expenses it has already paid to this provider. However, the Arbitrator further finds that the surgery as performed by Dr. Chudik was not related to the accident arising out of and in the course of the Petitioner's employment on August 19, 2012. As such, the medical bills submitted by the Petitioner for treatment in 2013 and 2014 are not related to any accident arising out of and in the course of the Petitioner's employment with the Respondent and medical bills submitted into evidence by the Petitioner as Petitioner's Exhibit 1 are found not to be related to any accident arising out of and in the course of the Petitioner's employment with the respondent, and therefore are not the responsibility of the Respondent.

3. The Arbitrator finds that the Petitioner is not entitled to payment of any temporary total disability. The Petitioner did not lose any time from work as a result of the accident arising out of and in the course of his employment with the Respondent on August 19, 2012. The Petitioner testified that he only lost time from the time of the surgery through August 19, 2013. The Arbitrator has previously found that the need for the surgery was not related to any accident arising out of and in the course of the petitioner's employment with the respondent, therefore the Petitioner is not entitled to any temporary total disability benefits.

4. The Arbitrator finds that the Petitioner's claim for penalties and attorney fees is denied. There has been no evidence presented that the Respondent has been unreasonable and vexatious in any way. Based upon the evidence presented to the Arbitrator, the Arbitrator finds that the Respondent's defense of this claim and its refusal to pay benefits was reasonable and legally supported.

5. Respondent shall receive a credit for $3,921.55 pursuant to Section 8(j) of the Act and in accordance to the stipulation of the parties as evidence in Arbitrator Exhibit 1. This amount represents short term disability benefits paid as referenced in Respondent Exhibit 14.

6. Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this standard to this claim, the Arbitrator first notes that there was no evidence of any impairment rating presented by either party. Petitioner is a welder, who was 52 years old at the time of the injury, with no evidence of loss of any future earning capacity. Petitioner continues to do the job he had prior to his injury with no medical restrictions. With regard to any evidence of disability corroborated by the medical records, Petitioner sustained a knee contusion, but testified that he still had complaints of aches and weakness, noted with walking and using stairs. However, as noted above, the Petitioner underwent a surgery to his right knee for a condition that was not related to his original injury and it is very likely that some of the Petitioner's current complaints stem from that unrelated condition and surgery. Taking the above factors into consideration, Respondent shall pay the petitioner the sum of $515.96/week for a further period of 10.75 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused the permanent loss of use the petitioner's right leg to the extent of 5% thereof.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANDRZEJ GORNICKI,

Petitioner,

14IWCC1081

vs.

NO: 12 WC 16385

HALINA'S RESIDENTIAL PLACEMENT,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses, medical fee schedule, and Section 8.1(b), and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Based upon a review of the record as a whole, and taking into account the factors of Petitioner's age, the impact on his ability to earn wages in the future, the AMA rating provided by Dr. Bernat, the occupation of the Petitioner, and evidence of disability contained in the medical records, the Commission modifies the Arbitrator's permanent partial disability award from 35% loss of use of each hand to 20% loss of use of the left hand and 25% loss of use of the right hand under Section 8(e) of the Act.

Furthermore, the Commission finds the Arbitrator erroneously awarded permanent partial disability under Section 8(d)2 and 8(c) for the same injury to Petitioner's forehead. The Petitioner is not entitled to an award under both Section 8(d)2 and 8(c) for the same injury. Wargo v. Industrial Commission, 31 Ill.2d 143(1964). The Commission finds no basis upon which a Section 8(d)2 award would be appropriate in this matter. Therefore, the Commission vacates the Arbitrator's award of 5% loss of use of the man as a whole under Section 8(d)2, and affirms the Arbitrator's award of 3 weeks of disfigurement as compensation for serious and

14IWCC1081

permanent disfigurement to Petitioner's forehead, pursuant to Section 8(c) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 22, 2014, is hereby modified for the reasons stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $653.33 per week for a period of 39-4/7 weeks, from April 11, 2012 through January 11, 2013, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $588.00 per week for a period of 95.25 weeks, as provided in §8(e) and §8(c) of the Act, for the reason that the injuries sustained caused the Petitioner 20% loss of use of the left hand and 25% loss of use of the right hand, and for the reason that the injuries sustained caused the Petitioner disfigurement to the forehead to the extent of 3 weeks.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $19,920.06 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of 5% man as a whole under §8(d)2 is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: DEC 12 2014
KWL/kmt
11/18/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC1081

Case# 12WC016385

GORNICKI, ANDRZEJ
Employee/Petitioner

HALINA'S RESIDENTIAL PLACEMENT SERVICES LLC
Employer/Respondent

On 1/22/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2291 BELLAS & WACHOWSKI
PETER C WACHOWSKI
115 N NORTHWEST HWY
PARK RIDGE, IL 60068

0560 WIEDNER & McAULIFFE LTD
JAMES W STEVENSON JR
ONE N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Andrzej Gornicki
Employee/Petitioner

v.

Halina's Residential Placement Services, LLC
Employer/Respondent

Case # **12** WC **16385**

Consolidated cases: **N/A**

14IWCC1081

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Falcioni**, Arbitrator of the Commission, in the city of **Geneva & New Lenox**, on **10/09/2013; 11/13/2013; 11/20/2013, and 12/20/2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **04/11/2012**, Respondent ***was*** operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.
On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.
Timely notice of this accident ***was*** given to Respondent.
Petitioner's current condition of ill-being ***is*** causally related to the accident.
In the year preceding the injury, Petitioner earned $N/A; the average weekly wage was **$980.00**.
On the date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.
Petitioner ***has*** received all reasonable and necessary medical services.
Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.
Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.
Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $653.33 /week for 39 2/7 weeks, commencing 04/11/2012 through 01/11/2013, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $19,920.06, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $588.00/week for 143.50 weeks, because the injuries sustained caused the 35% loss of each of the right and left hands, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $588.00/week for 25 weeks, because the injuries sustained caused the 5% loss of the person as a whole, as provided in Section 8(d)2 of the Act for the head injuries sustained.

Respondent shall pay Petitioner permanent partial disability benefits of $588.00/week for 3 weeks, because the injuries sustained caused the disfigurement of the forehead, as provided in Section 8(c) of the Act.

Respondent shall pay to Petitioner penalties of $0, as provided in Section 16 of the Act;$ 0, as provided in Section 19(k) of the Act; and $0, as provided in Section 19(l) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

January 7, 2014
Date

JAN 22 2014

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Attorney No. 2291

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

Andrzej Gornicki,
Employee/Petitioner

v.

Halina's Residential Placement Services, LLC
Employer/Respondent

14IWCC1081

Case No. 12 WC 16385

MEMORANDUM OF DECISION OF ARBITRATOR

I. PROCEDURAL BACKGROUND

The Application for Adjustment of Claim was timely filed on May 10, 2012 and listed the head and both wrists as the injured body parts with an accident date of April 11, 2012.

Petitioner filed his request for hearing on July 17, 2013. A trial date of October 9, 2013 was set. On October 9, 2013 the parties appeared before the Honorable Falcioni in Geneva, at which time the Petitioner presented his testimony. The trial was continued to November 13, 2013 in New Lenox, then to November 20, 2013 in New Lenox, and proofs were closed on December 20, 2013.

The request for hearing stipulation sheet was marked as Arbitrator's Exhibit 1 and was received into evidence.

II. TESTIMONY AND EVIDENCE

A. TESTIMONY OF PETITIONER ANDRZEJ GORNICKI

Petitioner testified that his name is Andrzej Gornicki and that he lives at 6N418 Tucker Avenue in Saint Charles, Illinois. His date of birth is November 23, 1958, and on the date of accident, April 11, 2012, he was 53 years of age, and was married with no dependent children.

Petitioner testified that at the time of the accident he was employed by Halina's Residential Placement Services.

Petitioner testified that in addition to the work outlined in the work description provided by the Respondent, he was charged with performing "odd jobs" as requested by the employer, such as snow removal, painting, cleaning of gutters, cleaning, fixing things, and other handyman tasks around the premises.

The Petitioner stated that he spoke with his employer, Daniel Migo, the day before the accident. The Petitioner stated that on April 10, 2012 the Respondent directed him to cut the limbs and branches off various bushes, trees, and pine trees. He stated that they walked around the property and that Daniel Migo specifically showed him which branches, bushes, and trees needed to be trimmed and cut. The Petitioner stated that he used a small pocket knife to put markings on the branches, bushes, and trees where cutting was supposed to be done. The Petitioner stated that he had cut branches in his life before, but never had trimmed any trees for Daniel Migo.

Petitioner testified that he went and got a ladder and an electric chainsaw from his mother's home in St. Charles. The place of accident was also in St. Charles. The Petitioner stated that this was done following the conversation with Daniel Migo where Daniel Migo had instructed him to cut the branches in question. Petitioner testified that he saw landscapers at the property that would cut grass, but never saw any tree-cutters cutting any sorts of trees.

The Petitioner testified that on April 11, 2012 between 2:00pm and 3:00pm, he fell from a ladder while cutting a large branch off of a tree, thereby sustaining bilateral wrist fractures and a concussion to his head.

The Petitioner looked at pictures and specifically referred to Respondent's Exhibit Numbers 2 and 3 as the tree that he was told, by Daniel Migo, to cut. Respondent's Exhibits 2 and 3 are pictures of the tree from which the Petitioner fell while standing on a ladder, which caused the injuries in question.

Petitioner testified as to 25 photographs that comprised Petitioner's Exhibit Number 18. Petitioner testified that the 25 photographs truly and accurately depict the pine trees that were trimmed and to the height to which they were trimmed, which shows that it was several feet off the ground. The Petitioner testified that it shows the branch in question that was cut, which caused the accident. Petitioner also testified that Group Exhibit Number 18 shows the thickness of branches and bushes that were cut. It should be noted that they range in diameter from what appears to be an inch and a half to as much as three inches. Clearly, these sized branches could not be broken off by hand, and it must have been contemplated by Daniel Migo that a power saw would be used.

Respondent supplied an "Incident Report" which was admitted as Respondent's Exhibit Number 1. The Petitioner testified that with regard to Respondent's Exhibit Number 1, that he did not sign the document. He stated that he wanted to take the document and read it and have it interpreted so that he knew what it meant. He stated that both he and his wife do not speak English, and would always speak with Daniel Migo in Polish. He did not authorize his wife to sign the document on his behalf, and in fact, the document was not signed by the Petitioner.

The Petitioner testified that he never contacted nor threatened Daniel Migo.

The Petitioner testified that his injuries are serious and that he has a 50 pound weight restriction, and believes that this is more than he can actually lift. He testified that he has not worked since the accident. He stated that he has bumps on his wrists now that were not there prior to the accident, which show deformity.

Petitioner testified that he treated in Poland for this accident. In fact, he showed an MRI, which was translated from Poland which is dated on December 12, 2012 (Petitioner's exhibit number 11). Petitioner also testified with regard to Petitioner's Exhibit Number 16, which was admitted, but not provided for the truth of the matter asserted. Petitioner testified that he treated on June 29, 2012, July 20, 2012, July 23, 2012, July 3, 2012, June 8, 2012, and October 9, 2012 with a neurologist in Poland (Petitioner's Exhibit Number 16).

B. TESTIMONY OF MARIA GORNICKI

Mrs. Maria Gornicki testified that she is the wife of the Petitioner, Andrzej Gornicki. At the time of the accident, Mrs. Gornicki was also employed by the Respondent.

She stated that her husband performed various odds and end jobs when he lived with her at the residence where Halina's was located. She indicated that Halina's was like an old people's home where they lived and were on duty full-time. She testified that the Petitioner would perform cleaning, painting, he would fix small things around the house. He would cut and trim bushes. He would go grocery shopping with her.

Maria Gornicki indicated that Daniel Migo would tell her husband to do various things around the home. He would tell him how to do things.

She indicated that on the date before the accident, April 10, 2012, she overheard and saw through an open window Daniel Migo specifically tell her husband that he wanted him to trim the branch which the Petitioner was trimming when he had his accident.

On April 10, 2012, Daniel was overheard telling the petitioner that he planned to put a couch for the residents to sit at the location up against the building in the area under which the branch in question was situated and that he wanted it cut.

She testified that on April 11, 2012, the Petitioner was cutting trees and branches from 9:00am until 11:00am and that at 11:00am, he helped her to prepare lunch for the residents at the place of accident. She indicated that at 1:30pm after lunch, he went back to cutting trees and bushes and that shortly thereafter is when the accident occurred.

The Petitioner's wife indicated that the Petitioner has not worked since the accident. Specifically, he has not worked any jobs whatsoever and has not worked as a mechanic since the accident.

Maria Gornicki did concede that Daniel Migo "did not force the Petitioner to cut the trees". She also agreed that the Petitioner did not want to sign Respondent's Exhibit Number 1 and that she did not understand what it meant and that all she thought and was told that it meant by Daniel Migo was that he did not force the Petitioner to cut the trees. She does not read or speak English and that is why she signed her husband's name to the document.

C. TESTIMONY OF DANIEL MIGO

Daniel Migo testified that he has been with Halina's for the last 13 years. He indicated that Halina's is in the residential home care business and that Halina's owns four homes that are all in the St. Charles area. He testified that he is the co-owner of the company and that Halina's employed Maria Gornicki and Andrzej Gornicki.

Daniel Migo indicated that there was a written job description of what the exact job duties for the Petitioner were (Respondent's Exhibit Number 4).

Daniel Migo stated that the Petitioner was hired to perform all sorts of odds and ends jobs. His duties did not only include taking care of the residence. He repaired locks and doors and performed various types of handyman types of chores. Daniel Migo testified that Respondent's Exhibit Number 4 indicated supposedly what the job duties were to be of the Petitioner. He admitted that nowhere in Exhibit Number 4 was there anything about snow removal, or painting, or wall board repairs, or handyman projects which Petitioner performed. There was also nothing which indicated that gutters were to be cleaned or repaired, or that downspouts needed to be cleaned or repaired, which tasks Petitioner also performed. When asked if the Petitioner would have used a ladder to clean the gutters and downspouts, Daniel Migo admitted that it was possible, but thought it could be done from a chair.

Daniel Migo testified that there are trees on the property where the accident happened. He indicated that those are his trees. He indicated that he walked around with the Petitioner and showed him which bushes and trees he wanted cut. (Petitioner's Exhibit Number 18 shows which branches were cut). Daniel Migo stated to the Petitioner that he wanted the branch in question cut, but allegedly did not want the Petitioner to cut the branch in question. Daniel Migo testified that there are certain days when branches are picked up by the village. He indicated that the Petitioner used his own ladder and brought his own tools to cut the branches in question.

Daniel Migo admitted that on April 10, 2012, he spoke to the Petitioner about cutting bushes. He also stated that he wanted the Petitioner to cut branches on pine trees. He admitted that the bushes and pine trees in question were involved in the business of Halina's and were on the grounds of Halina's. Daniel Migo testified that he believed that the Petitioner should cut the branches in question using his hands because they're really just weeds.

Daniel Migo testified that he told the Petitioner not to cut the branch in question. He allegedly told the Petitioner that he was going to have a tree service or a landscaping

company do it because he thought it was unsafe to have the Petitioner cut the branch in question. He testified that the Petitioner specifically told him that he wanted to cut the branch for him.

He could not produce any receipts from any landscaper for any of the landscaping or, specifically, for any tree cutting that was done.

Daniel Migo stated that he came to the accident scene shortly after the accident occurred. He stated that he witnessed the Petitioner trembling, and had asked what happened. The Petitioner told him that the saw got jammed and he fell off the ladder.

With regard to Respondent's Exhibit Number 1, Daniel Migo indicated that he prepared the document. He stated that he was sitting at the dining room table with the Petitioner and the Petitioner's wife, and that he translated the document. He stated that the Petitioner indicated that he wanted to get back with him, but then the wife decided to sign it. He stated that he slid it over to her for a signature and never threatened them to sign it.

With regard to Respondent's Exhibit Number 1 Daniel Migo testified that the document does not say anywhere on it that he told the Petitioner not to cut the branch in question. He admitted that the document was signed by the wife of the Petitioner and that it was not signed by the Petitioner. He admitted that he always spoke Polish to both Andrzej Gornicki and Maria Gornicki. He stated that the Petitioner was hired to assist Maria Gornicki.

Daniel Migo stated that he never called the Petitioner to ask him if he needed help. He indicated that he never asked him if he could help him in any way. He indicated that the Petitioner called him four times, and that it was not until the fourth call that he picked up, where he was threatened by Petitioner in an effort to get Respondent to pay Peitioner's medical bills. He indicated that he received a telephone call from the Petitioner, and that the Petitioner demanded that his bills be paid and that he be paid $25,000, otherwise he would kill the family of Daniel Migo.

Daniel Migo indicated that he could accommodate the Petitioner with a 50 pound lifting restriction.

A. MEDICAL RECORDS AND ITEMIZED BILLS OF DELNOR COMMUNITY HOSPITAL

Petitioner's Exhibit 2 and 3 are the medical records and itemized bills of Delnor Community Hospital.

The records indicate that, "the patient fell earlier today from ladder landing on concrete outstretched arm, lacerated forehead six to eight centimeters in length. Bleeding controlled" (Petitioner's exhibit number 2 page 6). The Petitioner was diagnosed with fracture and head injury (Petitioner's exhibit number 15 page 6). The history indicated a fall from a ladder and head trauma (page 17 of Petitioner's exhibit number 2). The right wrist radiograph showed a comminuted impacted fracture distal radial metaphysis with

the fracture line involving the articular surfaces with the distal radial ulnar joint. There is positive ulnar variance (Petitioner's exhibit number 2 page 18). The left wrist radiograph showed a comminuted transverse and vertically oriented fracture of the distal radial metaphysis. The fracture lines involve the radius surface. Fracture line also appears to involve the radial ulnar joint articular surface. There is slight positive ulnar variance. There is a questionable navicular fracture. Two metallic density structures were noted within the soft tissues between the first and second metacarpals posteriorly and on the palmar aspect of the fourth metacarpal (Petitioner's exhibit number 2 page 19).

The records indicate "patient has evidence for a closed head injury and because of the extent and depth of his forehead laceration, a CT scan of his brain was ordered. He did have full-thickness laceration of the frontal scalp (Petitioner's exhibit number 2 page 21).

The diagnoses for the Petitioner were as follows:

1. Closed head injury without loss of consciousness;

2. Forehead laceration;

3. Bilateral wrist fracture (Petitioner's exhibit number 2 page 22).

The records from Delnor indicate that the Petitioner was placed in bilateral casts (Petitioner's exhibit number 2 page 30). Petitioner also complained of headache (Petitioner's exhibit number 2 page 39).

The total amount incurred at Delnor Community Hospital by the Petitioner in relation to this accident is $13,182.42.

B. MEDICAL RECORDS, MEDICAL OPINIONS, ITEMIZED BILLS, AND DEPOSITION OF ALLEN U. VAN, M.D./VAN ORTHOPAEDIC & SPINE SURGERY, S.C.

Petitioner's Exhibits 4 and 5 are the medical records and bill of Allen U. Van, M.D. of Van Orthopaedic & Spine Surgery, S.C.

Petitioner's Exhibit 6 are the medical opinions of Dr. Van dated January 16, 2013. Pursuant to Dr. Van, the injuries that the Petitioner sustained on April 11, 2012 are a direct result of his accident at work and that the accident did cause the bilateral distal radius fractures. Furthermore, it was Dr. Van's opinion that the above injuries occurred as a result of the injuries that arose out of and in the course of the Petitioner's employment.

According to Dr. Van, all treatments that the Petitioner has received to this point has been appropriate. Dr. Van released the Petitioner to work as of January 11, 2013 with a 50lbs lifting restriction opining that 50 lbs lifting may be the Petitioner's likely permanent restriction.

Petitioner's Exhibit 7 is the deposition transcript of Dr. Van.

The total amount of Dr. Van's bills amounts to $4,136.50.

C. TESTIMONY OF DR. ROBERT BERNAT, AMA EVALUATION REPORT AND DEPOSITION.

Dr. Robert Bernat testified that the petitioner is at the absolute highest level of disability allowed pursuant to the AMA for the injuries sustained which totals 8% MAW.

III. FINDINGS OF LAW AND FACT

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

The Arbitrator notes that the parties presented directly contradictory testimony on the question of whether Respondent directed Petitioner to trim the branch in question or forbade him from doing so. A careful examination of the record reveals no other evidence present in this case to enable the Arbitrator to determine which witness may be the more credible, and it is impossible to determine same. Therefore, the Arbitration decision will be rendered without reference to whether or not respondent requested or forbade Petitioner to conduct the activity which led directly to his injury as alleged herein. Based on the record as a whole, and as set forth more fully below, the Arbitrator finds that Petitioner did sustain an accident that arose out of and in the course of his employment with Respondent, and that there is a causal connection between said accident and his current condition of ill being.

In *Sekora v. Industrial Commission*, 198 Ill.App.3d 584, 556 N.E.2d 285, 144 Ill.Dec. 818 (2d Dist. 1990), an automobile salesman was performing the daily task of taking all vehicles displayed outside the building, including motorcycles, into the garage. Before bringing a motorcycle into the garage, the employee took a ride in an adjoining field and, on his way back, sustained an injury. The employer denied compensation, pointing to its rule that stated that the motorcycles should be rolled into the building without starting them. The appellate court affirmed the Industrial Commission's denial of compensation, stating that "if an employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, a resulting injury will not be within the course of employment unless the employer had knowledge of or acquiesced in such unreasonable conduct." 556 N.E.2d at 289. When an injury resulted while the employee was performing an act of a personal nature for his own convenience, even employer acquiescence cannot convert that personal risk into an employment risk. *Orsini v. Industrial Commission*, 117 Ill.2d 38, 509 N.E.2d 1005, 109 Ill.Dec. 166 (1987).

When the "employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties," any resulting injury will be outside the course of his employment unless the employer "has knowledge of or has acquiesced in

such a practice." *Broadway v. Industrial Commission of Illinois*, 124 Ill.App.3d 983, 464 N.E.2d 1139, 1141, 80 Ill.Dec. 156 (4th Dist. 1984), quoting *Segler v. Industrial Commission*, 81 Ill.2d 125, 406 N.E.2d 542, 543, 40 Ill.Dec. 536 (1980). In the present case, the Petitioner was within the reasonable exercise of his duties. The employer told him to cut some branches. If there was a "misunderstanding" or not, and the Petitioner was cutting a branch that Respondent did not want him to cut, it still was for the benefit of the employer. There was no benefit for Petitioner whatsoever. The Arbitrator insupport of his decision notes the following case law.

Where the violation of a rule or order of the employer takes the employee entirely out of the sphere of his employment and he is injured while violating such rule or order it cannot be then said that the accident arose out of the employment, and in such a case no compensation can be recovered. If, however, in violating such a rule or order the employee does not put himself out of the sphere of his employment, so that it may be said he is not acting in the course of it, he is only guilty of negligence in violating such rule or order and recovery is not thereby barred. It does not matter in the slightest degree how many orders the employee disobeys or how bad his conduct may have been, if he was still acting in the sphere of his employment and in the course of it the accident arose out of it. *Chadwick v. Industrial Commission*, 179 Ill.App.3d 715, 534 N.E.2d 1000, 128 Ill.Dec. 555 (4th Dist. 1989) 534 N.E.2d at 1001, quoting *Republic Iron & Steel Co. v. Industrial Commission*, 302 Ill. 401, 134 N.E. 754, 755-756 (1922). See also *Gerald D Hines Interests v. Industrial Commission* 191 Ill.App.3d. 913, 548 N.E.2d. 342, 138 Ill.Dec. 929 (1st Dist. 1989).

The *Chadwick* court noted that if the employee is doing permitted work in a prohibited manner, compensation will be awarded. Because the decedent was where he was supposed to be and doing what he was hired to do, though in an obviously negligent manner, the safety violation occurred while acting within the scope of his employment, rendering the unreasonableness of the risk immaterial. 534 N.E.2d at 1002.

"Work being performed at the time of the injury was performed within the purposes for which [the claimant] was hired and was so enmeshed with the usual business of the employer that the injuries suffered are compensable." *Harry Fleming Washer Service v. Industrial Commission*, 36 Ill.2d 272, 222 N.E.2d 490, 491 – 492 (1966).

In this instance, the Petitioner's work performed at the time of the injury was performed within the purposes for which he was hired and was enmeshed with the usual business of the employer. The person in authority, Daniel Migo, directed him to perform the task of cutting limbs and branches off of bushes and trees for his private benefit; the task of cutting the branch in question undoubtedly advanced the Respondent's interests as is clear from the photographs of the branch and it's proximity to the structure on Respondent's property, and lastly, the Petitioner has undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered.

For all of the above reasons, the Arbitrator finds that the Petitioner's accident arose out of and in the course of Petitioner's employment by Respondent.

J. **Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all the appropriate charges for all reasonable and necessary medical services?**

The Arbitrator finds that the credible evidence and testimony prove that the medical treatment as provided in Petitioner's exhibits was clearly reasonable and necessary. The Arbitrator further finds that Respondent has not paid all appropriate charges for all reasonable and necessary medical services. The following bills have not been paid by Respondent and it is Respondent's obligation to immediately pay said bills for treatments that were reasonably required to cure and relieve the Petitioner from the effects of his accidental injury as recommended on behalf of Petitioner by his treating physicians:

Provider	Amount of Bill	Credit	Amount Due Petitioner
Petitioner's Exhibit 3 Delnor Community Hospital:	$13,182.42	0	$13,182.42
Petitioner's Exhibit 5 Allen U. Van, M.D. / Van Orthopaedic & Spine Surgery	$4,136.50	0	$4,136.50
Petitioner's Exhibit 8 Valley Emergency Care Management	$1,580.00	0	$1,580.00
Petitioner's Exhibit 9 Valley Emergency Care, Inc.:	$310.00	0	$310.00
Petitioner's Exhibit 10 Tri City Radiology S.C.:	$590.00	0	$590.00
Petitioner's Exhibit 13 Out-of-Pocket Prescriptions:	$121.14	0	$121.14
	Total		$19,920.06

K. What temporary benefits are in dispute?

Total Temporary Disability (TTD)

Petitioner is entitled to total temporary disability (TTD) benefits for 04/11/2012 through 01/11/2013, representing 39 2/7 weeks at a TTD rate of $653.33 for a total amount due of $25,666.54, as provided in Section 8(b) of the Act.

L. What is the nature and extent of the injury?

In making findings regarding Nature and Extent of the injury, the Arbitrator notes that he has considered the factors of Petitioner's age, the impact on his ability to earn wages in the future, the AMA rating provided by Respondent the occupation of Petitioner and the evidence of disability contained in the medical records. Based on the record as a whole, the Arbitrator finds as follows.

Respondent shall pay Petitioner permanent partial disability benefits of $588.00/week for 143.50 weeks, because the injuries sustained caused the 35% loss of each of the right and left hands, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $588.00/week for 25 weeks, because the injuries sustained caused the 5% loss of the person as a whole, as provided in Section 8(d)2 of the Act for the head injuries sustained.

Respondent shall pay Petitioner permanent partial disability benefits of $588.00/week for 3 weeks, because the injuries sustained caused the disfigurement of the forehead, as provided in Section 8(c) of the Act.

M. Should penalties or fees be imposed upon Respondent?

The Arbitrator finds that a legitimate legal basis for dispute exists in this case and therefore declines to award penalties and attorney fees as requested by Petitioner.

Arbitrator Robert Falcioni _____ Date

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Czuprynski,

Petitioner,

vs.

14IWCC1100

NO: 12 WC 03616
12 WC 31362
13 WC 35670

Continental Tire North America,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 16, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC1100

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $9,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: DEC 15 2014

David L. Gore

Stephen Mathis

Mario Basurto

DLG/gaf
O: 12/11/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CZUPRYNSKI, ROBERT
Employee/Petitioner

Case# **12WC003616**

12WC031362

13WC035670

CONTINENTAL TIRE NORTH AMERICA
Employer/Respondent

14IWCC1100

On 6/16/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.06% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#8 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0299 KEEFE & DePAULI PC
NEIL A GIFFHORN
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC1100

Robert Czuprynski
Employee/Petitioner

v.

Continental Tire North America
Employer/Respondent

Case # 12 WC 03616

Consolidated cases: **12 WC 31362**
13 WC 35670

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **April 9, 2014**. By stipulation, the parties agree:

On the date(s) of accident, **11/04/11, 07/09/12, 08/20/13, respectively**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **$45,094.40**, and the average weekly wage was **$867.20**.

At the time of injury, Petitioner was **47** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of $- for TTD, $- for TPD, $- for maintenance, and **$17,947.44 (PPD advance)** for other benefits, for a total credit of **$17,947.44 (PPD advance)**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

FACTS

The Parties stipulated that Petitioner sustained accidental injuries, respectively, on November 4, 2011 (repetitive), July 9, 2012 (left index finger and left thumb cut) and August 20, 2013 (left index finger cut). (AX1; AX2). Petitioner is an extruder sidewall operator. (T.8). His job involves managing a crew of four and loading rubber weighing 30 to 40 lbs. onto slab loaders, as well as changing toolings and die inserts that weigh approximately 50 lbs. (T.9). Petitioner testified that in the course of these duties, he began developing pain in his left wrist. (T.9). He reported his symptoms to Respondent, who referred him to Dr. David Brown of the Orthopedic Center of St. Louis. (T.10).

Based on Petitioner's radiographs, Dr. Brown diagnosed Petitioner with a TFCC defect consistent with a degenerative type lesion, and a cyst within the carpal bones including the capitate, hamate and lunate. (PX5, 01/16/12). Petitioner received conservative treatment by way of splinting, medication and injection. (PX5). Petitioner sought evaluation with Dr. Stephen Young, who diagnosed ulnar carpal impaction with degenerative TFCC tearing. (PX5; PX7). Based upon his findings, Dr. Young recommended an ulnar shortening osteotomy and wrist arthroscopy with potential replacement of the distal ulna. (PX7). Dr. Brown reviewed Dr. Young's recommendation, and disagreed with the required procedure. (PX5, 06/25/12). Dr. Brown expressed concern that an ulnar shortening osteotomy would not address the findings at Petitioner's distal radial ulnar joint and recommended that Petitioner manage this conservatively. *Id.* While this worked for a time, Petitioner's condition ultimately failed conservative treatment and required surgery. (PX5, 10/15/12).

On November 15, 2012, Dr. Brown performed a left wrist arthroscopic debridement of Petitioner's radial-sided TFCC tear, synovectomy of the left wrist and a hemiresection of the distal ulnar with interpositional arthroplasty. (PX8). Petitioner testified that the surgery only partially improved his condition, as reflected in Dr. Brown's notes. (T.12-13; PX5, 04/16/13, 04/30/13). He received additional injections following surgery. (PX5, 04/30/13, 07/08/13). On the last visit with Dr. Brown, Petitioner reported continued ulnar sided wrist pain primarily with heavy lifting at work or at home. (PX5, 12/04/13). Dr. Brown placed Petitioner at maximum medical improvement and recommended that he continue symptomatic control with non-steroidal anti-inflammatory medication. *Id.*

Petitioner testified that he still has swelling in his left wrist depending upon his level of activity, as well as fatigue. (T.13). Petitioner testified that he wears a brace when his pain gets severe and that he has noticed considerable loss of strength. (T.14). He notices his lack of strength the most while performing changeovers and reported a concurrent onset of soreness. (T.14-15). Petitioner also notices soreness while engaging in hobbies and fatigue in his left wrist while driving. (T.16). He takes over-the-counter medication for his symptoms. (T.14).

Respondent had Petitioner evaluated by Dr. Richard Howard, who found that Petitioner suffered from a chronic TFC tear secondary to ulnar impaction as a result of his work. (RX1). Dr. Howard's AMA evaluation concluded that Petitioner suffered a 3% disability based on loss of range of motion. *Id.* His disability rating gave no consideration to Petitioner's pain, swelling or the physical demands of Petitioner's job. *Id.*

Pursuant to §8.1(b) of the Act, the Arbitrator hereby considers the five statutory factors in the evaluation of Petitioner's permanent partial disability:

(i) **Impairment Rating:** Respondent had Petitioner evaluated by Dr. Richard Howard, who found that Petitioner suffered from a chronic TFC tear secondary to ulnar impaction as a result of his work. (RX1). Dr. Howard's AMA evaluation concluded that Petitioner suffered a 3% disability based on loss of range of motion. *Id.* His disability rating gave no consideration to Petitioner's pain, swelling or the physical demands of Petitioner's job. *Id.*

The Arbitrator notes that impairment does not equate to permanent partial disability under the Act; the AMA guidelines candidly acknowledge same, even going as far as to say that most physicians are not trained in making comprehensive disability determinations. *AMA Guides, 6th Edition,* p.5; *see also Frederick Williams v. Flexible Staffing, Inc.*, 13 I.W.C.C. 0557 (2013). Specifically, the AMA guidelines fail to take into consideration the full impact the injury has on employment, which is the very substance of permanent partial disability, and only considers its impact on "ADLs" or activities of daily living. The divergence can be illustrated by the scenario in which a pianist and a truck driver both lose a finger; while the AMA rating would be nearly identical for both, the disability rating clearly would not be. Additionally, the physician performing the evaluation is wholly free to ignore a patient's subjective symptoms if they feel those symptoms are magnified or they are not supported by objective testing. This is troubling considering that patients often continue to have significantly disabling symptoms after a surgery that often are not readily identifiable through objective testing. Dr. Howard took no note of Petitioner's pain, swelling, or job demands, only loss of range of motion. Thus, while taking into consideration the rating as required by the Act, the Arbitrator declines to simply adopt the AMA rating as the disability rating.

(ii) **Occupation:** Petitioner continues to be employed at Continental Tire North America performing the strenuous job duties of an extruder sidewall operator. Petitioner's job requires repetitive heavy lifting, which places significant strain on his left wrist and exacerbates his symptoms.

(iii) **Age:** Petitioner was 47 years old at the time of his injury. He has diminished healing capacity as a result thereof.

(iv) **Earning Capacity:** While there is no direct evidence of reduced earning capacity contained in the record, based on the severity of Petitioner's injuries, the extent of surgical intervention required, the need for additional injections following surgery, and his testimony of swelling and pain with the performance of his job duties which is mirrored in the records of Dr. Brown, it is reasonable to conclude that such repercussions will manifest in the near future.

(v) **Disability:** Petitioner's account of his disability is identical to that reflected in the medical records. On the last visit with Dr. Brown documented Petitioner's continued ulnar sided wrist pain primarily with heavy lifting at work or at home. (PX5, 12/4/13). Petitioner testified that he still has swelling in his left wrist depending upon his level of activity, as well as fatigue. (T.13). Petitioner testified that he wears a brace when his pain gets severe and that he has noticed considerable loss of strength. (T.14). He notices his lack of strength the most while performing changeovers and reported a concurrent onset of soreness. (T.14-15). Petitioner also notices soreness while engaging in hobbies and fatigue in his left wrist while driving. (T.16). He takes over-the-counter medication for his symptoms. (T.14).

Based upon the aforementioned factors, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in the 25% loss of his left hand.

With regard to Petitioner's cuts on his left index finger and thumb, the Arbitrator awards 1% disfigurement for the left index finger, and 1% disfigurement for the left thumb.

ORDER

Respondent shall pay Petitioner the sum of **$520.32**/week for an additional period of **16.75** weeks, as provided in Section **8(e)** of the Act, because the injuries sustained caused **25% loss of the left hand (51.25 weeks)**, an additional **$8,718.96** in compensation beyond the **$17,947.44** in advance permanent partial disability benefits paid by Respondent.

Respondent shall pay Petitioner permanent partial disability benefits of **$520.32**/week for **1.19** weeks, because the injuries sustained caused the disfigurement of the **left index finger (0.43 weeks) and the left thumb (0.76 weeks)**, as provided in Section 8(c) of the Act.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Edward Lee
Signature of Arbitrator

6/14/14
Date

JUN 16 2014

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Derek Flatt,
Petitioner,

vs.

NO: 13 WC 08344

State of Illinois Pinckneyville Correctional Center,
Respondent,

14IWCC1107

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, prospective medical expenses, the nature and extent of the petitioner's permanent disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 27, 2014 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond or summons for State of Illinois cases.

DATED: DEC 19 2014

MB/mam
o:10/23/14
43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FLATT, DEREK
Employee/Petitioner

Case# **13WC008344**

14IWCC1107

SOI-PINCKNEYVILLE CORRECTIONAL CENTER
Employer/Respondent

On 5/27/2014, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 27 2014

RONALD A.RASCIA, Acting Secretary
Illinois Workers' Compensation Commission

14IWCC1107

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DEREK FLATT
Employee/Petitioner
v.
STATE OF ILLINOIS – PINCKNEYVILLE CORRECTIONAL CENTER
Employer/Respondent

Case # 13 WC 8344

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Herrin**, on **April 2, 2014**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **January 5, 2013**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$58,708.00**; the average weekly wage was **$1,129.00**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit for TTD paid (all TTD benefits owed were paid by Respondent through extended benefits), **$0** for TPD, **$0** for maintenance, and **$0** for other benefits.

Respondent is entitled to a credit for all medical bills paid under Section 8(j) of the Act.

ORDER

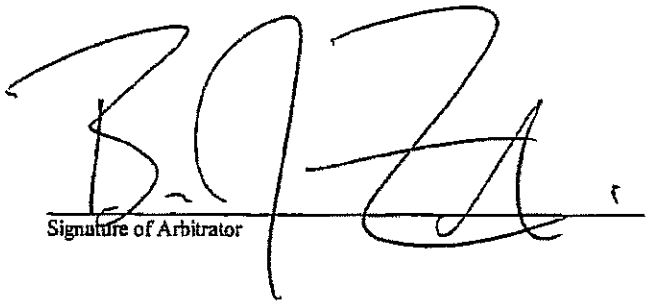
Respondent shall pay reasonable and necessary medical services as outlined in Petitioner's Exhibit 1 (as delineated in the Memorandum of Decision of Arbitrator), and as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for all medical bills paid under Section 8(j) of the Act.

Petitioner is entitled to the sum total of temporary total disability benefits for the periods he was taken off work per his treating physician, and said total amount of benefits owed were paid by Respondent through extended benefits.

Respondent shall pay Petitioner permanent partial disability benefits of $677.40/week for 53.75 weeks, because the injuries sustained to his knee caused the 25% loss of use to the leg, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

05/15/2014
Date

MAY 27 2014

14IWCC1107

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

DEREK FLATT
Employee/Petitioner

v.

Case # 13 WC 8344

STATE OF ILLINOIS –
PINCKNEYVILLE CORRECTIONAL CENTER
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of the stipulated injury, Petitioner, Derek Flatt, was a 43-year-old correctional officer for Respondent at its Pinckneyville facility. On January 5, 2013, Petitioner was involved in an inmate altercation which resulted in a wrestling brawl that took both he and another sergeant to the ground. Petitioner struck and injured his left knee during the takedown. Petitioner had no claims, care or treatment for his left knee prior to the January 5, 2013 incident. Respondent does not dispute accident.

Promptly following the accident, Petitioner reported to the Franklin Hospital emergency room, where he was noted to be suffering from "Altercation Lt. Knee Pain" and physical examination findings showed moderate tenderness, swelling and limited range of motion. (Petitioner's Exhibit (PX) 3). X-rays were negative, but Petitioner was referred to Rose Grunert, FNP, for follow-up care. (PX 3; PX 4, 1/6/13). On his first visit with FNP Grunert, Petitioner gave a consistent history of his work injury. Petitioner reported a stabbing pain to his patella with weight bearing or bending along with regional cramping. Petitioner was able to walk, but not without pain. Petitioner was given medication and advised to use crutches. (PX 4, 1/6/13).

Petitioner returned to FNP Grunert with reports of continued pain in his left knee (mistakenly referred to as right knee during office visit) when walking or bearing weight. Petitioner was instructed to return following an appointment with a specialist for an MRI, but he testified that he attempted without success to obtain the MRI for six months. (PX 4, 1/11/13). He testified that there was a "mix-up" in Springfield that prevented him from getting the exam, but he called Respondent everyday and talked to Warden Gates and Major Stiller in an attempt to make matters straight, get his treatment, and return to work.

Petitioner ultimately sought treatment with Dr. Nathan Mall. (PX 5, 7/15/13). Petitioner testified without rebuttal that he did not sustain any injuries between the time of his work accident and the time he saw Dr. Mall for his left knee. Dr. Mall noted that Petitioner injured his left knee while breaking up an inmate fight, and

noted persistent pain and swelling in the left knee with activity. Petitioner reported that his pain was worse with stairs and that he also had giving way symptoms and a clicking sensation. Physical examination showed medial joint line tenderness with a positive McMurray's test inducing pain on the medial side of the left knee. Dr. Mall also noted swelling. Dr. Mall's assessment was possible left knee meniscus tear and possible cartilage defect of the patellofemoral joint. Dr. Mall believed that Petitioner sustained a meniscal tear with the spinning/twisting type action performed while subduing the inmate, and that Petitioner jammed his knee and caused cartilage damage during the fight as well. Dr. Mall stated that Petitioner's swelling with activity was a sign of an intraarticular problem and not just patellofemoral pain. Thus, he recommended an MRI. Dr. Mall stated that the inmate fight would cause both a meniscus tear or a patellofemoral cartilage defect, and stated the following: "In terms of causation it is clear that [Petitioner] has suffered an injury at work and this injury is directly related to his knee symptoms." (PX 5, 7/15/13).

Petitioner returned to Dr. Mall following the MRI, which demonstrated and confirmed Dr. Mall's diagnosis of a medial meniscus tear and cartilage defect of the patella and potentially a trochlear defect. (PX 5, 7/17/13; PX 6). Dr. Mall noted that the majority of Petitioner's symptoms and swelling were likely related to his patellar cartilage injury and recommended surgery based on Petitioner's lack of functional improvement and continued symptoms. (PX 5, 7/17/13, 8/12/13).

On September 26, 2013, Petitioner underwent left knee arthroscopy, partial medial meniscectomy and chondroplasty of the patella. Petitioner's postoperative diagnosis was left knee medial meniscus tear and patellar cartilage defect. (PX 8). Petitioner subsequently engaged in therapy (PX 7), and was eventually returned to work full duty. (PX 5).

In support of its dispute of causation, Respondent tendered an exhibit regarding Petitioner's hobby of playing tennis. (RX 2). Regarding his ability rating of 3.0, Petitioner testified as follows:

Q: And I notice there's some numbers in these tennis records. What do those numbers mean when you're talking about – let's say next to your name is a 3.0?

A: Yeah, that's my rating, sir. You're rated on your abilities. A pro would be a seven five. A good college player would be a five zero or a five five. I'm a three zero currently, so that just means I can basically hold a racket. I know the rules, and I'm better than the average player. I'm a bad club player is what I am.

(Transcript, pp. 17-18).

With regard to the match record, he testified that his brother, his partner in doubles, won the matches:

Q: What was your record?

A: Not very good. I won one singles match, and that was against Kroker (phonetic) who actually was sick that day, so that – and the other one's doubles which again is not like what you see on TV. I basically stand in the corner, and my brother wins the match for us

> because it's usually older gentlemen, and he and I aren't quite as old. I won some with doubles, but my brother won those basically.

(Transcript, p. 18).

Petitioner testified that he has never injured his left knee playing tennis.

Petitioner testified that despite his improvement from surgery, he still experiences symptoms. Petitioner testified to aching with changes in the weather and stabbing pains with increased activity followed by soreness and a swollen sensation. Petitioner job requires him to climb stairs. His sports hobbies have been negatively affected. Petitioner takes over-the-counter medication for his symptoms. The final record of Dr. Mall corroborates Petitioner's testimony of improvement, but continued left knee complaints with activity. (PX 5, 10/14/13). Respondent did not have Petitioner examined.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

Circumstantial evidence, especially when entirely in favor of the claimant, is sufficient to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Industrial Comm'n,* 260 Ill. App. 3d 92, 96–97, 631 N.E.2d 724 (4th Dist. 1994); *International Harvester v. Industrial Comm'n,* 93 Ill.2d 59, 63-64, 442 N.E.2d 908, 910-911 (1982). A doctor's testimony is not required to establish causation and the extent of disability when there is a clear causal chain and the medical reports in the record corroborate the employee's testimony. *Gubser v. Industrial Comm'n,* 42 Ill.2d 559, 564, 248 N.E.2d 75 (1969); *see also Union Starch & Refining Co. v. Industrial Comm'n,* 37 Ill.2d 139, 144, 224 N.E.2d 856 (1967). In the case at bar, Petitioner presented both circumstantial evidence and an expert medical opinion to prove causation.

Dr. Mall opined without rebuttal that in terms of causation it was clear that Petitioner suffered an injury at work and that this injury was directly related to his knee symptoms. Petitioner testified that he informed Dr. Mall of his tennis playing activities. Petitioner testified that he has never injured his left knee playing tennis. Petitioner had no claims, care or treatment for his left knee prior to the January 5, 2013 incident. The record is void of any evidence or allegations to the contrary. Furthermore, the Arbitrator found Petitioner a very credible witness at trial. He testified in an open, pleasant, and forthcoming manner, and appeared to be endeavoring to give the full truth, including during cross-examination.

While Petitioner lacked treatment for some time before he saw Dr. Mall, this was not the fault of Petitioner. The unrebutted testimony shows that there was a "mix-up" in Springfield that prevented Petitioner from obtaining an MRI; however, he called his supervisors daily to move the matter forward and return to work. Respondent did not dispute, question, or rebut Petitioner's testimony. The ultimate issue is not whether there is a gap in treatment, but rather whether the initial accident was a causative factor in the condition of ill-being which was produced. *See Gordon v. State of Illinois DOT Joliet Yard,* 07 IWCC 1599 (Dec. 7, 2007). Vital to the issue of causal connection is whether the symptoms and findings later in treatment match up to the

symptoms immediately following the incident. *Id.* Petitioner's symptoms and complaints are consistent throughout the record.

The Arbitrator finds that Petitioner engaging in his normal routine of tennis playing does not rise to the standard of an intervening accident. The Illinois Workers' Compensation Act does not require complete dysfunction from accidental injury, and even if non-employment factors contribute to a compensable injury, the chain of causation is not broken. *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040, 723 N.E.2d 846 (3d Dist. 2000), citing *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 610 N.E.2d 1 (1st Dist. 1994) and *Lasley Const. Co., Inc. v. Industrial Comm'n*, 274 Ill. App. 3d 890, 655 N.E.2d 5 (5th Dist. 1995). Merely experiencing symptoms following a work-related injury while performing other activities does not rise to the standard of intervening cause. *See Lasley Const. Co.*, cited *supra*; *see also Vogel v. Ill. Workers' Comp. Comm'n*, 354 Ill. App. 3d 780, 821 N.E.2d 807, 812-813 (2d Dist. 2005). Courts have consistently held that for an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition; as the Court in *Lasley Const. Co.* aptly put it, "The fact that other incidents, whether work related or not, may have aggravated claimant's condition is irrelevant." *Lasley Const. Co., Inc. v. Industrial Comm'n*, 274 Ill. App. 3d at 893; *see also Teska v. Industrial Comm'n*, cited *supra* (finding no intervening accident since there would have been no aggravation due to bowling "but for" the original work related accident and the initial injury). Similarly, the Supreme Court of Illinois has held that the work injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 797 N.E.2d 665 (2003).

Based on the foregoing, the Arbitrator finds that Petitioner's current condition of ill-being is causally related to the injury.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner is entitled to recover reasonable medical expenses that are causally related to the accident and that are required to diagnose, relieve, or cure the effects of claimant's injury. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill. App. 3d 705, 691 N.E.2d 13 (2d Dist. 1997).

As a result of his accidental work injury, Petitioner sustained a medial meniscus tear and patellar cartilage defect. Dr. Mall specifically noted that Petitioner had failed conservative treatment prior at the time he recommended surgery. Prior to submitting to surgery, Petitioner attempted to resolve his condition with crutching, medication and therapy, to no avail. Despite these modalities, Petitioner still suffered from left knee pain, medial joint line tenderness and swelling. Following surgery, Petitioner's complaints of pain, although not completely resolved, were much improved, and Petitioner was able to return to work full duty. Dr. Mall opined without rebuttal that Petitioner's symptoms which necessitated surgery were the direct result of Petitioner's undisputed work injury.

Based upon the foregoing, the Arbitrator finds that the medical services rendered to Petitioner were related, reasonable and necessary in the quest to relieve Petitioner of the effects of his undisputed work accident of January 5, 2013. Respondent shall therefore pay the sum of the following medical expenses, found in Petitioner's Exhibit 1:

Franklin Hospital	$	775.00
Dr. Grunert/Family Healthcare Clinic	$	210.00
Dr. Nathan Mall/Regeneration Orthopedics	$	4,457.00
MRI Partners of Chesterfield	$	2,000.00
Nova Care Rehabilitation	$	5,050.00
St. Louis Surgical Center	$	10,704.00
Ballas Anesthesia	$	1,000.00
TOTAL:	$	**24,196.00**

Respondent shall have credit for any amounts paid by it or through its group carrier, for which credit may be allowed under Section 8(j) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act").

Issue (K): What temporary benefits are in dispute? (TTD)

Respondent does not dispute the fixation of Petitioner's period of disability, only liability for same as it pertains to causal connection. Respondent paid extended benefits to Petitioner during his period of temporary total disability (TTD). Based upon the above findings regarding causation, the Arbitrator hereby awards the benefits previously paid by Respondent for the claimed period of TTD, as Petitioner's current condition of ill-being is causally related to his undisputed accidental injury.

Issue (L): What is the nature and extent of the injury?

Petitioner's date of accident falls after September 1, 2011, and therefore Section 8.1b of the Act shall be discussed concerning the permanent partial disability (PPD) award being issued. It is noted when discussing the permanency award being issued that no PPD impairment report pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act was offered into evidence by either party. This factor is thereby waived.

Concerning Section 8.1b(b)(ii) of the Act (Petitioner's occupation), Petitioner was employed as a correctional officer at the time of his injury and continues to be employed in that capacity. Respondent's "Demands of the Job" form indicates that Petitioner is required to spend between four-to-six hours on his feet and up to two hours of his day climbing stairs. (PX 9). The Arbitrator thus finds Petitioner's operated knee to be critical, given the extensive ambulatory requirements of Petitioner's employment. Therefore, significant weight is afforded this factor when determining the PPD award.

Concerning Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of the injury), Petitioner was 42 years old at the time of his injury. The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's PPD will be moderately greater than that of an older individual because Petitioner

will have to live and work with the consequences of the injury for a longer period of time. The Arbitrator gives weight to the factor of age in determining the PPD award.

Regarding Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), there was no direct evidence of reduced earning capacity contained in the record, and therefore no weight is given to this factor when determining the permanency award.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), Petitioner sustained a medial meniscus tear and patellar cartilage defect. Petitioner's account of his injury was consistent with the reports of his treating surgeon. Petitioner testified that despite his improvement from surgery, he still experiences symptoms. Petitioner testified to aching with changes in the weather and stabbing pains with increased activity followed by soreness and a swollen sensation. Petitioner's job requires him to climb stairs up to two hours per day and to stand and/or walk between four-to-six hours per day. His sports hobbies have been negatively affected. Petitioner takes over-the-counter pain medication for his symptoms. The final record of Dr. Mall corroborates Petitioner's testimony of improvement, but continued left knee complaints with activity. Lastly, the Arbitrator notes Petitioner's credibility as discussed above. The Arbitrator gives great weight to the foregoing factor when determining the PPD award.

Based upon the aforementioned factors, the Arbitrator finds that Petitioner sustained injuries that resulted in the 25% loss of use to the left leg pursuant to Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carl Jones,

Petitioner,

vs. NO: 11 WC 40157

Orland Fire Protection District,

Respondent,

14IWCC1112

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and nature and extent and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Arbitrator's decision and awards the Petitioner 8% loss of use of the person as a whole.

Petitioner was injured at work on September 20, 2011. He first had pain in his ribs but as that settled down he felt pain in his cervical spine. (Transcript Pgs. 25-27) An MRI was performed on October 5, 2011 which showed a mild disc bulge at C5-C6 with a super-imposed central disk herniation resulting in a mild central spinal canal and mild right foraminal narrowing. (Petitioner Exhibit 3)

Petitioner was a firefighter paramedic and was returned to full duty on January 23, 2012. At his last visit to Dr. Tyndall, an orthopedic surgeon, on February 6, 2012, he was asymptomatic and had full range of motion. He had no evidence of discomfort. The Doctor found that he had resolved neck pain due to the disk and was at MMI. (Petitioner Exhibit 3)

14IWCC1112

Petitioner had an episode of marked tenderness in his left neck and saw Dr. Moisan. Moisan felt that Petitioner had cervical spondylosis and facet arthropathy. He prescribed a trial medrol dosepack. This visit occurred on July 12, 2013 and Petitioner has not been back to another doctor for his cervical spine since.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $695.78 per week for a period of 40 weeks, as provided in §8(d)(2) of the Act, for the reason that the injuries sustained caused the the complete and total loss of use of 8% of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $28,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: DEC 19 2014

Charles J. DeVriendt

Daniel R. Donohoo

Ruth W. White

HSF
O: 10/21/14
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JONES, CARL
Employee/Petitioner

Case# **11WC040157**

ORLAND FIRE PROTECTION DISTRICT
Employer/Respondent

14IWCC1112

On 12/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0147 CULLEN HASKINS NICHOLSON ET AL
CHARLES G HASKINS JR
10 S LASALLE ST SUITE 1250
CHICAGO, IL 60603

RUSIN MACIOROWSKI & FRIEDMAN
MARK COSIMINI
2506 GALEN DR SUITE 108
CHAMPAIGN, IL 61821

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CARL JONES,
Employee/Petitioner

Case # 11 WC 40157

Consolidated cases: N/A

v.
ORLAND FIRE PROTECTION DISTRICT,
Employer/Respondent

14IWCC1112

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Arbitrator Molly Dearing, Arbitrator of the Commission, in the city of Urbana, on October 21, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD

L. ☒ What is the nature and extent of the injury?

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

14IWCC1112

FINDINGS

On ***September 20, 2011,*** Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** related to the accident.

In the year preceding the injury, Petitioner earned ***$101,534.26***; the average weekly wage was ***$1,952.58***.

On the date of accident, Petitioner was ***33*** years of age, ***married***, with ***2*** children under 18.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit for the full salary paid to Petitioner as temporary total disability benefits.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $695.78 per week for 30 weeks, because the injuries sustained caused the 6% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from September 20, 2011 through October 21, 2013, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

November 25, 2013
Date

DEC 3 - 2013

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

14IWCC1112

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

CARL JONES,
Employee/Petitioner

v.

Case 11 WC 40157

ORLAND FIRE PROTECTION DISTRICT,
Employer/Respondent.

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, at the time of his accident, was thirty three years of age. He was employed by Respondent as a firefighter/paramedic, and had been employed by Respondent in that capacity since September 24, 2007. Petitioner holds a certification in technical rescue and is a member of the CART team, which facilitates technical rescues and retrieves patients from various situations.

On September 20, 2011, Petitioner was engaged in a training exercise for the CART team on the second day of a confined space class. Petitioner was performing line transfers, in which a simulated victim gets stuck on a rope, and the firefighter/paramedic retrieves the victim utilizing a harness, rope and locking device and returns the victim to the ground. After performing that exercise, Petitioner testified that he felt pain in his right ribs, and down into his stomach. He completed the training that day, but the pain became worse and disturbed his sleep that night. The following day, the pain continued in a stabbing and cramping sensation on his right side. He could not finish the training that day. Petitioner contacted an individual with Respondent, and he was instructed to go to the hospital.

On September 21, 2011, Petitioner presented to the Emergency Room at Carle Foundation Hospital. He was given morphine, and underwent a CT scan of his abdomen and radiographs of his ribs, both of which were negative. Petitioner was discharged with a diagnosis of blunt trauma of the left abdominal wall and left lower chest wall pain secondary to trauma, prescribed Vicodin for pain management, and advised to follow up with his primary care physician if needed. PX 1.

Petitioner followed up with Dr. Terrence C. Moisan the next day, at which time Dr. Moisan ordered another CT of the abdomen, which revealed a limited noncontrast study and no fluid collections to suggest rupture of solid organs. Dr. Moisan ordered Petitioner to be reevaluated in four days, and took Petitioner off work until his reevaluation. On September 26, Petitioner presented to Dr. Moisan with improved complaints of pain in the right abdominal muscles, but also with discomfort in his neck. Dr. Moisan noted that the CT scan failed to reveal any visceral

injury, indicated that Petitioner now has cervical spasms, but did not find any cervical spinal injury. Dr. Moisan allowed Petitioner to return to full duty as of September 29, 2011. PX 2.

Petitioner returned to Dr. Moisan on October 4, 2011, with complaints of neck discomfort and right arm numbness at the C5-C6 distribution. Dr. Moisan noted a sensory deficit at C6, and ordered Petitioner a Medrol Dosepack and a MRI of the cervical spine. Dr. Moisan's impression was that Petitioner suffered from cervical radiculopathy, and he gave Petitioner work restrictions of no carrying greater than fifty pounds until the results of the MR are obtained. Pet. Ex. 2.

The MRI of Petitioner's cervical spine, performed on October 5, 2011, revealed a disc bulge at C5-6 with a superimposed central disc herniation with mild central spinal canal and mild right foraminal narrowing. PX 3. An addendum to Dr. Moisan's notes of October 6 indicated that Dr. Moisan, after reviewing the MRI, referred Petitioner for an orthopedic opinion. PX 2.

Petitioner was evaluated by Dr. Dwight S. Tyndall, an orthopedic physician, on October 12, 2011. A physical examination showed diminished range of motion in the cervical spine, especially in extension, tenderness to palpation in the posterior cervical spine, and neurologically intact in the upper extremities with slight diminution on the right. Dr. Tyndall interpreted the cervical radiographs to show a diminished disc height at C5-6, and the MRI to be consistent with a small annular tear at C5-6 with a small posterior disc bulge. He diagnosed Petitioner with neck pain and C5-6 radiculopathy. Dr. Tyndall ordered Petitioner prescription medication, recommended physical therapy, and continued Petitioner's fifty pound weight restriction. PX 3.

Petitioner began a course of physical therapy on October 28, 2011 and continued through January 17, 2012. Petitioner's physical therapy records reflect continued improvement in Petitioner's pain levels and functional abilities. PX 3.

On January 12, 2012, Petitioner received a cervical epidural steroid injection by Dr. Rajive Adlaka at the referral of Dr. Tyndall. PX 4. On January 18, 2012, Petitioner presented to Dr. Tyndall with reports of improvement and no pain. On exam, Dr. Tyndall noted a full range of motion of the cervical spine. Petitioner was neurologically intact in the upper and lower extremities, and Petitioner had a normal gait. Dr. Tyndall's assessment was "resolved symptoms of a cervical disc herniation." Dr. Tyndall released Petitioner to return to work without restrictions, and he recommended Petitioner follow up with him in two weeks. PX 3. The following day, Petitioner returned to Dr. Moisan. Petitioner was feeling well, had adequate range of motion, and was neurologically intact. Dr. Moisan returned Petitioner to work full duty as of January 23, 2012. PX 2.

Dr. Tyndall's final visit with Petitioner was on February 6, 2012, at which time Petitioner indicated his neck pain had not returned since returning to work without restrictions. Petitioner was noted to be asymptomatic. He was not taking any medications, and he was doing well. Upon examination, Petitioner had a full range of motion of the cervical spine, and no evidence of discomfort. Dr. Tyndall's assessment was resolved neck pain due to a C5-6 disc bulge. He noted Petitioner could return to his normal activities. Dr. Tyndall placed Petitioner at maximum medical improvement. PX 3.

On July 24, 2012, Petitioner presented to Dr. Moisan with complaints of increasing pain in the cervical spine, especially on the left side (PX 2), as Petitioner testified he felt as if he suffered a flare-up of pain to the same area in his neck. Petitioner reported no new trauma and no radiculopathy. A physical examination revealed marked tenderness and pain at the left cervical region. Dr. Moisan diagnosed Petitioner with cervical spondylosis and facet arthropathy, and prescribed Petitioner a Medrol Dosepack. PX 2.

At the request of Respondent, Petitioner underwent a Section 12 evaluation by Dr. Michael Kornblatt on July 30, 2012. Petitioner advised Dr. Kornblatt he had some discomfort in his neck with pain between his shoulder blades, but denied any radicular symptoms. On physical examination, Petitioner had full range of motion of his cervical spine, but Dr. Kornblatt noted some central neck discomfort with left lateral bending and extension. Dr. Kornblatt opined that Petitioner injured his neck at work in September 2011 resulting in cervical disc syndrome and right cervical radiculopathy. Dr. Kornblatt noted that the diagnostic studies were consistent with mild degenerative disc disease at C5-6, which was temporarily exacerbated by the work injury, but had resolved. Dr. Kornblatt placed Petitioner at maximum medical improvement as of February 6, 2012. Dr. Kornblatt opined that the symptoms Petitioner experienced subsequent to that date, on July 24, 2012, for which he represented to Dr. Moisan, were unrelated to the work injury, but rather, related to cervical degenerative disc disease at C5-6. Dr. Kornblatt also determined Petitioner had an impairment rating of 4% of the whole person based upon the Sixth Edition of the AMA Guidelines. Dr. Kornblatt testified by way of evidence deposition on August 5, 2013. RX 3.

At Arbitration, Petitioner testified that prior to his work injury of September 20, 2011, that he had not had any neck pain. Since returning to work full duty in January 2012, he has been performing his regular job duties as a firefighter/paramedic. Petitioner indicated the job description, which was admitted into evidence as PX 5 and RX 1, was an accurate reflection of his job duties. Petitioner testified that the physical requirements of a firefighter/paramedic include the carrying of heavy equipment, including hoses and axes, and the movement of patients. The gear weighs approximately sixty five pounds, and EMS packs, which are the bags carried by first responders, weigh between forty and fifty pounds. When moving patients, he may have to kneel to retrieve patients from the floor, a bed, or moving them up or down stairs, before placing the patient on a cot and transporting them to the hospital. Petitioner feels that certain positions that he utilizes at work and in picking up his children cause pain and discomfort in his neck. Petitioner continues to engage in all of the same job duties following the accident as he did before. He is presently able to perform all of his training activities, including paramedic training, which may be strenuous.

Petitioner testified that PX 6 reflects his wages in the year preceding his accident. He worked a significant amount of overtime during the reflected time period. Since having returned to work, there have been some changes to the amount of overtime he has worked, in part due to a change in the amount of available overtime. Respondent has hired eleven new members in Petitioner's department. He is currently making more money than he was at the time of his work injury because of scheduled raises. Since returning to work full duty, Petitioner testified that he cannot state whether his injuries have had any affect on the amount of overtime he worked, as he cannot ascertain whether he has declined available overtime or whether he has not put in for it.

CONCLUSIONS OF LAW

In regard to disputed issue (F), Arbitrator finds that Petitioner's current condition of ill-being is related to the work accident of September 20, 2011. Despite having been placed at maximum medical improvement by Dr. Tyndall on February 6, 2012, Petitioner credibly testified to a recurrence in his neck pain for which he sought treatment with Dr. Moisan on July 24, 2012. Petitioner also credibly testified, which went unrebutted, that he did not suffer any new cervical injuries between the time in which he was placed at maximum medical improvement on February 6 and when he sought treatment with Dr. Moisan on July 24. Although Dr. Kornblatt found Petitioner's condition at the time of Dr. Kornblatt's examination to be related solely to Petitioner's degenerative disc disease, the Arbitrator finds that Dr. Kornblatt's opinion is undermined by the fact that he himself noted central neck discomfort with lateral bending and extension on examination in Petitioner's cervical spine, which is consistent not only with Petitioner's complaints to Dr. Moisan, and Dr. Moisan's findings of July 24, but also with the findings of Petitioner's treating physicians throughout the duration of his treatment. Dr. Kornblatt's opinion that Petitioner's current condition is related solely to his degenerative disc disease is further undermined by Petitioner's credible and unrebutted testimony that he did not suffer from any cervical spine complaints prior to his work injury. Given that Petitioner had not suffered any symptomatology in his neck prior to his work injury, it strains credulity to conclude that Petitioner's neck pain and physical examination findings of July 24, which were reasonably consistent throughout the duration of his treatment, are unrelated to his work injury. Therefore, the Arbitrator finds that Petitioner's current condition of ill-being is related to the work accident of September 20, 2011.

In regard to disputed issue (L), pursuant to Section 8.1b of the Act, in determining the level of permanent partial disability for accidental injuries that occur on or after September 1, 2011, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a) [obtained through the most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order. 820 ILCS 305/8.1b(b).

Concerning Section 8.1b(b)(i) of the Act, the Arbitrator finds a percentage of impairment rating, pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act, in the record offered by Respondent of 4% of the whole person. This rating went unrebutted by Petitioner, in that Petitioner did not provide an impairment rating. Petitioner, however, challenged the sufficiency of the rating during Dr. Kornblatt's deposition, at which time Petitioner questioned whether Dr. Kornblatt appropriately applied the modifiers enumerated in the AMA so as to deviate from the default rating of 6% impairment. RX 3. The Arbitrator places some weight on the impairment rating of 4% when making the permanency determination.

Concerning Section 8.1b(b)(ii) of the Act, Petitioner's present occupation, as it was at the time of injury, is a firefighter/paramedic, which, based upon Petitioner's testimony as to the physical requirements of his job and his job description admitted as PX 5 and RX 1, the Arbitrator finds to be a heavy demand job. Both Dr. Moisan and Dr. Tyndall released Petitioner to return to work full duty (Pet. Ex. 2, 5), which indicates that both physicians were of the opinion that Petitioner could return to the heavy physical demands of his work. The Arbitrator places some weight on this factor when determining permanency.

Concerning Section 8.1b(b)(iii) of the Act, Petitioner was thirty three years of age at the time of his accident. Arb. X 1. The Arbitrator considers Petitioner to be a young individual, who will likely live with any permanent partial disability and the consequences of his work injury for a greater number of years than would an older worker. The Arbitrator places significant weight on this factor when making the permanency determination.

Concerning Section 8.1b(b)(iv) of the Act, Petitioner tendered a wage statement as PX 6, and proffered testimony as to reduced overtime availability following his injury. Petitioner is currently making more money in totality than he was at the time of his work injury due to scheduled raises arising from a collective bargaining agreement. Since January 2012 when he returned to work full duty, Petitioner testified as to changes in the amount of overtime he worked, in part due to a change in the amount of available overtime. Respondent has hired eleven new members in Petitioner's department alone. Petitioner indicated that he cannot state whether his injuries have had any effect on the amount of overtime he worked, as he cannot ascertain whether he has declined available overtime, or not put in for it since being released to return to work. Therefore, the Arbitrator finds that Petitioner has not suffered any impairment in future earning capacity as a result of the accident of September 20, 2011. The Arbitrator places some weight on this factor in determining permanency.

Concerning Section 8.1b(b)(v) of the Act, Petitioner's treating records indicate that Petitioner suffered blunt trauma of his abdominal wall and chest pain that resolved, as well as neck pain and radiculopathy due to a disc bulge at C5-6 with a superimposed central disc herniation, which was treated conservatively with physical therapy and an epidural steroid injection. Petitioner testified to minimal residual complaints and limitations following his work accident. Specifically, Petitioner testified that he continues to suffer pain and discomfort when his neck is in certain positions, which is reasonably reflected in his treating records. PX 2. The Arbitrator places significant weight on this factor when making the permanency determination.

The Arbitrator notes that the determination of permanent partial disability benefits is not simply a calculation, but an evaluation of all five factors as stated in the Act. After applying §8.1(b) of the Act and weighing all of the factors enumerated in same, the Arbitrator finds that Petitioner has sustained accidental injuries that caused 6% loss of use to his person as a whole, as provided in §8(d)2 of the Act.